

A **Lock Wee Kock v Menteri Hal Ehwal Dalam
 Negeri & Anor**

SUPREME COURT (PULAU PINANG) — CRIMINAL APPEAL NO 05-30-92

B GUNN CHIT TUAN CJ (MALAYA), EUSOFF CHIN AND WAH YAHYA
 SCJJ
30 SEPTEMBER 1993

C ***Criminal Procedure*** — *Habeas corpus* — *Preventive detention under Dangerous
Drugs (Special Preventive Measures) Act 1985* — *Periods for submission of reports* —
Whether mandatory for Minister to prescribe periods by regulations — *Dangerous Drugs
(Special Preventive Measures) Act 1985 ss 3, 5 and 6*

D ***Statutory Interpretation*** — *Construction of statutes* — *Whether words 'as may be
prescribed by the Minister' have mandatory effect* — *Dangerous Drugs (Special Preventive
Measures) Act 1985 ss 3(3) & 5(4)*

E The appellant had been arrested and detained by the police under s 3(1)
of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the
Act'). On the 57th day of his arrest, the Deputy Minister of Home
Affairs issued a detention order under s 6(1) of the Act for the
appellant to be detained for two years at the Pusat Pemulihan Akhlak,
Pulau Jerejak. An application for habeas corpus and for the release of
the appellant was made to the High Court but was dismissed. The
appellant appealed. It was argued on appeal that it was mandatory for
the Minister to fix the periods for the submission of reports by the
investigating officer and inquiry officer under ss 3(3) and 5(4) of the Act,
which provide that the reports shall be submitted within such period 'as
may be prescribed by the Minister'. It was argued that this should be
treated as mandatory and the Minister must prescribe the periods by
regulations.

G **Held**, dismissing the appeal:

H (1) The words 'as may be prescribed by the Minister' found in ss 3(3)
and 5(4) of the Act ought to be treated as conferring a power to
prescribe, exercisable at the discretion of the Minister, and not as
mandatory. The fact that no period had been prescribed by the
Minister for the submission of reports under ss 3(3) or 5(4) of
the Act did not vitiate the process leading to the detention order
made by the Minister.

I (2) The provisions of the Act gave the police the power to detain an
arrested person in police custody for a period not exceeding 60
days. In this case, the detention order was made by the Minister
on the 57th day from the date of arrest and was therefore valid.

[Bahasa Malaysia summary]

Perayu telah ditangkap dan ditahan di bawah s 3(1) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta itu'). Pada hari ke-57 selepas perayu ditangkap, Timbalan Menteri Hal-Ehwal Dalam Negeri telah mengeluarkan perintah tahanan di bawah s 6(1) Akta itu untuk menahan perayu di Pusat Pemulihan Akhlak, Pulau Jerejak selama dua tahun. Permohonan untuk habeas corpus dan untuk pembebasan perayu telah dibuat ke Mahkamah Tinggi tetapi telah ditolak. Perayu telah membuat rayuan. Pada pendengaran rayuan itu, telah diujahkan bahawa adalah mandatori untuk Menteri menetapkan tempoh masa untuk penyerahan laporan oleh pegawai penyiasat dan pegawai siasatan di bawah ss 3(3) dan 5(4) Akta itu yang memperuntukkan bahawa laporan itu hendaklah diserahkan dalam masa 'as may be prescribed by the Minister'. Telah diujahkan bahawa ini seharusnya disifatkan sebagai mandatori dan Menteri hendaklah memperuntukkan masa itu melalui peraturan.

Diputuskan, menolak rayuan itu:

- (1) Perkataan 'as may be prescribed by the Minister' yang terdapat di dalam ss 3(3) dan 5(4) Akta itu patut disifatkan sebagai memberi kuasa untuk menetapkan, yang boleh digunakan mengikut budiicara Menteri, dan bukan sebagai mandatori. Hakikat bahawa tidak ada masa yang diperuntukkan oleh Menteri untuk menyerahkan laporan itu di bawah s 3(3) atau s 5(4) Akta itu tidak mentaksahkan proses yang membawa kepada pembuatan perintah tahanan oleh Menteri itu.
- (2) Peruntukan Akta itu memberikan kuasa kepada polis untuk menahan seseorang yang ditangkap itu selama tidak lebih daripada 60 hari. Di dalam kes ini, perintah tahanan itu telah dibuat oleh Menteri pada hari ke-57 selepas perayu ditangkap dan oleh itu adalah sah.]

Notes

For cases on habeas corpus, see 5 *Mallal's Digest* (4th Ed) paras 1251, 1269–1277.

For cases on construction of statutes, see 11 *Mallal's Digest* (4th Ed) paras 1328–1333.

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3, 5, 6 Interpretation Act s 37 [Barbados]

Appeal from: Criminal Application No 44–83–91 (High Court, Penang)

Karpal Singh (*Karpal Singh & Co*) for the appellant.

Dato' Hamid Embong (Senior Federal Counsel) for the respondent.

- A **Eusoff Chin SCJ** (delivering the grounds of judgment of the court): The appellant was arrested and detained by the police on 15 September 1990, at 2.15pm at Batu Pahat under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (hereinafter 'the Act'). On 13 November 1990, the Deputy Minister of Home Affairs issued a detention order under s 6(1) of the Act for the appellant to be detained at the Pusat Pemulihan Akhlak, Pulau Jerejak, for two years.

B A habeas corpus application for the release of the appellant was filed in the Penang High Court on 29 April 1991. The High Court dismissed the application on 28 October 1991. Hence this appeal.

- C The only ground advanced before us is that the Minister had not complied with the provisions of ss 3(3) and 5(4) of the Act, and the failure to comply with these provisions has rendered the detention order void. Sections 3(3) and 5(4) of the Act state:

3(3) The police officer making an investigation pertaining to a person arrested and detained under this section shall cause a copy of the complete report of the investigation to be submitted—

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- (a) to an Inquiry Officer appointed under subsection (1) of section 5; and
- (b) to the Minister,

within *such period as may be prescribed* by the Minister by regulations made under this Act.

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5(4) An Inquiry Officer shall submit his report in writing to the Minister within such period *as may be prescribed* by the Minister by regulations made under this Act. (Emphasis added.)

F Encik Karpal Singh, the learned counsel for the appellant, submitted that although the word 'may' is used in ss 3(3) and 5(4) of the Act, it should be treated as mandatory and the Minister must prescribe the periods by regulations under s 22 of the Act which provides:

- (1) The Minister *may* make regulations to carry out the purposes of this Act.
- (2) In particular and without prejudice to the generality of subsection (1) such regulations *may*—

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- ...
(d) prescribe anything which may be prescribed under this Act.
(Emphasis added.)

- H The use of the word 'may' or 'shall' has led to some confusion in the interpretation of provision of a statute. In ordinary usage, the word 'may' is permissive, and the word 'shall' is imperative. The courts have always construed these words with reference to the context in which it is used. In order to find out whether these words are being used in a directory or mandatory sense, the intent of the legislature should be looked into, along with the pertinent circumstances. If it appears to be the settled intention of the legislature to convey the sense of compulsion, then whether the word 'may' or 'shall' is used, it has the mandatory effect. Perhaps the task of the court in interpreting these words would be solved if the Interpretation Acts 1948 and 1967 (consolidated and revised 1989) were to contain such
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provisions as that found in s 37 of the Barbados Interpretation Act — Laws of Barbados Cap 1 which states: A

In an enactment passed or made after 16 June 1966, the expression 'shall' shall be construed as imperative and the expression 'may' as permissive and empowering.

The significance of such a provision in the Interpretation Act will remind the legal draftsman to always confine the use of the word 'shall' to its mandatory sense, in contrast to the use of the word 'may' which denotes a permission or discretion. B

Going back to the issue before us, it is necessary to examine the provisions of sub-ss (1) and (2) of s 3 of the Act, which are: C

Power to detain suspected persons

- (1) Any police officer may, without warrant, arrest and detain, for the purpose of investigation, any person in respect of whom he has reason to believe there are grounds which could justify his detention under subsection (1) of section 6.
- (2) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty days without an order of detention having been made in respect of him under subsection (1) of section 6:
Provided that— D

- (a) he shall not be detained for more than twenty four hours except with the authority of a police officer of or above the rank of Inspector; E
- (b) he shall not be detained for more than forty eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police;
- (c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by the Inspector-General in that behalf and the Inspector-General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister. F

These provisions give the police the power to detain an arrested person in police custody for a period not exceeding 60 days. During this period, the police investigating officer must complete his investigation by examining and recording statements from the arrested person and others acquainted with the facts and circumstances of the case, and to collect documents or other things material to the investigation, complete his report and submit one copy of it to the inquiry officer appointed under s 5 of the Act and one to the Minister. The inquiry officer will then inquire if there are reasonable grounds for believing that such person has been or is associated with any activity relating to or involving the trafficking of drugs, and in carrying out his duty, the inquiry officer may do any or all of those things enumerated in s 5(3) of the Act. The inquiry officer then prepares his report and submits it to the Minister under s 5(4) quoted above. G H I

The Minister's power to make a detention order is given to him by s 6 of the Act which states:

- A (1) Whenever the Minister, after considering—
- (a) the complete report of investigation submitted under subsection (3) of section 3; and
 - (b) the report of the Inquiry Officer submitted under subsection (4) of section 5,
- B is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking of dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a 'detention order') direct that such person be detained for a period not exceeding two years.
- C It will be seen that Parliament has fixed the time periods under s 3(2) of the Act, but leaves it entirely to the Minister to fix the period within which the report is to be submitted under ss 3(3) and 5(4) of the Act. We are quite appreciative of the reasons why Parliament leaves it to the discretion of the Minister to fix the period. The Minister has to take into consideration the
- D amount of work and time which is taken up by the police and the inquiry officer to complete their investigation and inquiry. A simple and straight forward case may take few days to complete, while a complicated one may take longer. If the Minister fixes a time period within which the police investigating officer is to submit his report under s 3(3) or the inquiry officer under s 5(4) of the Act, that period may not be sufficient where the
- E case will involve a lengthy investigation or inquiry and this may result in the reports not being complete in the sense that matters which ought to be investigated or inquired into are left out. This will impose difficulty on the Minister to act under s 6(1) of the Act, when deciding to make or not to make the detention order.
- F The time may come when the Minister, through his experience in dealing with this matter, can positively assess what should be the time period within which the police investigating officer or the inquiry officer can certainly complete his report and, until the Minister can come to that conclusion, he should not fix the time by exercising his powers under ss 3(3) and 5(4) of the Act. We are of the view that for the reasons given, the
- G words 'as may be prescribed by the Minister' found in both sections ought to be treated as conferring a power to prescribe, exercisable at his discretion, and not mandatory. The fact that no period has been prescribed by the Minister within which the reports are to be submitted by the investigating officer under s 3(3) or by the inquiry officer under s 5(4) of the Act does not
- H vitiate the process leading to the detention order being made by the Minister. Under s 3(2) of the Act, the arrested person cannot be detained for more than 60 days without a detention order being issued by the Minister. We note that in this case, the detention order was made by the Minister on the 57th day from date of arrest.
- I We therefore dismiss this appeal.
- Appeal dismissed.*